

Comments for the United States Sentencing Commission Concerning Proposed Amendments for 1998

I want to thank the Commissioners for allowing the Internal Revenue Service, Criminal Investigation, to appear today. The prosecution and imprisonment of tax offenders is our primary reason for existence, and we are grateful for the opportunity to let you know why it is essential that the sentencing table for tax crimes be reformed as soon as possible. Every year that the Commission delays has the potential to further erode compliance with tax laws, thereby costing the government billions of dollars in lost revenue.

Federal criminal income tax prosecutions are complex, take a long time to investigate, and involve a substantial commitment of time and money from the Internal Revenue Service, the Department of Justice, and the Federal Judiciary. They are also quite rare. Convictions for tax offenses involving legal source income (income unrelated to illegal activities such as narcotics or organized crime) only number approximately 1,500 per year nationwide. Of these, less than 1,000 result in a sentence with true imprisonment.

When one considers that over 115,000,000 individual tax returns are filed per year, and there are millions of illegal non-filers, this situation is clearly intolerable. Tax evaders realize that their chances of being punished for their crimes are minuscule. As a result, honest taxpayers are being forced to pay an ever greater share of the burden. The estimated "tax gap" continues to grow to the point that it now exceeds \$100,000,000,000 (\$100 billion) per year. Without the effective deterrence of meaningful prison sentences for tax evaders this trend will continue, and the entire system of tax compliance will be in danger of collapse.

We are not asking for unduly harsh or severe sentences. We are asking for sentences that provide a reason for honest taxpayers to remain honest, and for dishonest taxpayers to fear detection. If tax criminals, most of whom are otherwise law-abiding businesspersons, knew that their chances of being prosecuted and imprisoned were greater, compliance would increase proportionately.

Since its inception, the Sentencing Commission has professed to believe that tax evasion is a serious matter. Adopting Option 2 would be a chance to deliver this message in a meaningful way.

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The Internal Revenue Service is in favor of any modification to the Federal Sentencing Guidelines which would increase the likelihood that convicted tax criminals would be imprisoned. The deterrent effect for each tax criminal sentenced to imprisonment ranges far beyond the individual sentenced. It extends to the entire surrounding community, the profession, industry, coworkers and business associates of the individual, and in notorious cases, to the entire nation. Conversely, news of tax criminals who are not imprisoned tend to undermine voluntary compliance and weaken enforcement efforts.

The current Sentencing Table does not require imprisonment for offenses in Zone A or B, which includes Offense Levels 1 through 10. Therefore, a minimum Offense Level of 11 must be attained to ensure some incarceration. Since the two level acceptance of responsibility reduction is virtually automatic in all guilty pleas, this means that a Tax Loss in the Offense Level 13 range (Over \$40,000 to \$70,000) is necessary to be assured of obtaining any imprisonment at all. This tends to exclude all but high income individuals from prosecution.

We must have a balanced enforcement program, which requires that tax evaders from most segments of the income spectrum be prosecuted. If only the wealthiest taxpayers face criminal sanctions, there is no real incentive for the overwhelming majority of the population to comply.

By way of illustration, 96% of all individual returns report adjusted gross incomes of less than \$100,000. The average tax on returns with adjusted gross incomes between \$75,000 and \$100,000 is \$12,625. Therefore, for these taxpayers even three years of evading all tax owed would not achieve the \$40,000 threshold for 96% of the public.

Therefore, we urge the Sentencing Commission to adopt Option 2 (for revising the Tax Loss Table) contained within Proposed Amendment Number 1, as listed in the January 6, 1998 Federal Register (Vol. 63, No. 3, Part II).

As for Proposed Amendment Number 5(C), concerning "sophisticated means," we agree with raising the base offense level to 12 which is contained in both options. We also are in favor of resolving the circuit conflict so that the element of sophistication is offense specific rather than offender specific, since this goes to the heart of deterrence.

However, we do not see any need to introduce the new terminology of "sophisticated concealment," nor do we approve of the dilution of language relating to the use of foreign bank accounts and financial transactions, and the use of corporate shells and fictitious entities. I believe that these changes will lead only to needless confusion and points of contention. I believe that the existing language is sufficiently clear, especially as it has been interpreted over the ten years that the guidelines have been in existence.

Thank you.